

Construction contractors are deemed the end users of property permanently affixed to real estate. See 86 Ill. Adm. Code 130.1940(b). (This is a GIL.)

August 19, 2004

Dear Xxxxx:

This letter is in response to your letter dated February 23, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing you regarding an issue that has been a subject of debate for years within our industry ...

Specifically, the collection of sales tax on major appliances that are permanently installed.

Our accountant contacted you previously regarding this issue and you responded by sending him copies of several prior rulings regarding this matter. But, while I am confident that I understand the rulings, I would like to make certain before I take any action so that we don't get ourselves into any legal or tax matters.

Therefore, what I am asking is if you could possibly forward this letter to someone in your legal department for review asking them to confirm for us the exact legalities of the collection of sales tax with regard to these types of appliances as it relates to our company.

Here is the exact question that we need answered:

Is the sale of an appliance which is of a built-in nature exempt from state and local sales tax?

For the purpose of this question, we are defining a built-in appliance as any one of the following appliances: Built-In Dishwasher, Over-The-Range Microwave Oven, Range Hood, Food Waste Disposers, Built-In Cooktop, or Built-In Wall Oven.

All of these products are such that they are permanently mounted within the premises using screws or bolts which go through the appliance into the cabinets and/or walls. This is different from free-standing appliances (such as a washer, dryer, free-standing range, refrigerator or freezer) which are not mounted in any way to the premises in which they are being installed.

Additionally, these built-in appliances are (typically) permanently hard wired into the electrical system of the premises in which they are being installed.

The reason this is of such importance to us is because two of our major competitors currently ARE NOT collecting sales tax on the sale of these types of appliances. Since we currently ARE collecting sales tax on these very same items, it puts us at a competitive disadvantage when the customer compares our total price and we are 8.75% higher on the bottom line.

Please review this case and issue a ruling as soon as possible. If we are not required to collect sales tax, then we would request that you send us written confirmation of that from your legal department.

If you have any further questions, please contact me.

DEPARTMENT'S RESPONSE

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales.

Your question is very fact dependent and its answer hinges on the specific nature of the transaction.

Over-The-Counter Sales

If a customer purchases an appliance over-the-counter without installation, then the retailer owes Retailers' Occupation Tax and must collect the corresponding Use Tax from the customer.

If a customer purchases an appliance over-the-counter and separately contracts for installation of the appliance, then the retailer owes Retailers' Occupation Tax and must collect the corresponding Use Tax from the customer on the sale of the appliance. The separately contracted for installation of the appliance is a separate service and no tax is incurred by the customer on the installation charges. See 86 Ill. Adm. Code 130.450.

Construction Contracts

Persons who take tangible personal property and permanently affix it to real estate act as construction contractors. Construction contractors are deemed the end users of property permanently affixed to real estate. See 86 Ill. Adm. Code 130.1940(b). The customer incurs no Use Tax and the construction contractor has no authority to collect Use Tax from the customer.

Many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as "sales tax," but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. In general, tangible personal property that is not permanently affixed would include, for instance, washers, dryers and window air conditioners. A customer in this case would incur Use Tax on the tangible personal property (washer, dryer, window air conditioner, etc.) sold at retail over-the-counter. The retailer would owe Retailers' Occupation Tax and must collect Use Tax from the customer for the over-the-counter sale. For information regarding whether tangible personal property is considered permanently affixed to real estate, see general information letters ST 01-0093-GIL and ST 01-0141-GIL which may be found among the Department's sales tax "Sunshine Letters" on the Department's internet website.

For a customer purchasing an appliance that is not permanently installed (washers, dryers, window air conditioners, etc.), and when the purchase agreement includes installation, the retailer incurs Retailers' Occupation Tax on the gross receipts from the sale of the appliance and the installation charges. You may wish to review general information letter ST 02-0264-GIL on the Department's website.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk